

**REMARKS**

Reconsideration of the application is respectfully requested.

Claims 1, 2, 8, 9, 11, 12, 14-16, 22-24, 28, 31, and 32 are in the application. Claims 3-7, 10, 13, 17-21, 25-27, and 29-30 are presently withdrawn in view of a previous election. Through this amendment, claims 1 and 15 have been amended. Support for the amendment may be found in at least paragraph [0033] of Applicants' specification. In addition, claim 23 has been amended.

In the Official Action, the Examiner objected to claim 23, particularly the phrase "said cylinder". In response, claim 23 has been amended to replace the phrase "said cylinder" with -- top wall--. It is respectfully submitted that the objection to claim 23 has been overcome with this amendment.

Claims 1, 2, 8, 9, 11, 12 and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wallace et al. (U.S. Design Patent No. 457,954) in view of Gates et al. (U.S. Patent No. 4,006,837). The Examiner asserted that Wallace et al. discloses "the claimed invention except for the top wall having an elliptical cross section" and relied on Figure 7 of Gates et al. to allegedly overcome this deficiency.

Wallace et al. is a design patent directed to a syringe tip cap which includes a shaft portion for mounting onto a syringe tip and a ribbed user engaging portion which is, as admitted by the Examiner, circular in cross-section.

Gates et al. is directed to a container closure which is shown in several embodiments. In general, and with reference to Figure 2, the closure includes a top wall portion 1a and a depending skirt portion 1b. The lower end of the depending skirt portion 1b includes a continuous, inwardly bent bead 1c which is shaped to engage lugs or interrupted threads 2 formed on the circular neck portion 4 of a jar 5. (Col. 2, ll. 1-10). The closure may be formed of different shapes, including an elliptical cross-section as shown in Figure 7. Gates et al. specifically requires that regardless of the shape of the closure, "the underlying principle being that the cap be constructed and arranged to have a widest radial dimension D greater than the corresponding radial dimensions of the interrupted threads on the jar, and a shortest radial dimension D' less than the corresponding radial dimensions of the interrupted threads." (Col. 2, ll. 29-34). This is likewise true for the elliptical cross-section as represented by the major axis A and the minor axis A'. (Col. 2, ll.37-43). With the disclosed configuration, the bead 1c may be rotated into and out of engagement with the interrupted thread 2 formed on the neck portion 4. (See, Figures 3 and 4; Col. 1, ll. 58-62). In all embodiments, the closure is internally formed with a different shape from the neck portion 4 of the jar 5.

With the hypothetical combination of Wallace et al. and Gates et al. as suggested by the Examiner, the Wallace et al. device would be modified to have its threaded syringe tip engaging

portion be formed with a cross-section which is different from the shape of the element being engaged. Specifically, Gates et al. discloses that the thread engaging portion of a closure has a different cross-section from the element it is engaging.

Amended claim 1 is directed to a tip cap for a syringe which includes “a base portion having an upper surface and a lower surface”; “a body having a top wall extending from said upper surface and having a substantially non-circular cross-section when viewed at an angle substantially perpendicular to said upper surface”; and, “a shaft extending from said lower surface, said shaft including means for connecting said tip cap to a syringe.” With claim 1, the shaft is specified as “being shaped internally to match the shape of the tip of the syringe.” As indicated above, with the hypothetical combination of Wallace et al. and Gates et al., the shaft would include a non-circular cross-section which would intentionally not match the shape of the syringe tip to be engaged. In contrast, claim 1 states that the shaft is shaped internally to match the tip of the syringe. The hypothetical combination of Wallace et al. and Gates et al. does not produce this result. Moreover, there is no disclosure or suggestion to modify Gates et al. to obtain this result. The provision of different cross-sections for the closure and corresponding neck is critical for Gates et al., and Gates et al. cannot be modified to avoid this element. See MPEP §2143.01(VI) (“If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.”). It is respectfully submitted that claim 1, along with depending claims 2, 8, 9, 11, 12, and 14, are patentable over Wallace et al. and Gates et al., each taken alone or in combination.

The Examiner rejected claims 15, 16, 22-24, 28, 31 and 32 under 35 U.S.C. §103(a) as being unpatentable over Wallace et al. in view of Gates et al. and further in view of Alchas (U.S. Published Patent Application No. 2002/0174864). The Examiner admitted that the combination of Wallace et al. and Gates et al. does not disclose “the syringe cap being used with a syringe comprising a barrel” and relied on Alchas for allegedly overcoming this deficiency.

Alchas is directed to a nasal delivery device which includes a spray nozzle. Contrary to the Examiner’s assertion, element 37 is not a tip cap, but rather a spray nozzle. (See, e.g., paras. [0023]-[0025]). The Examiner asserted in the Office Action that “Alchas does not explicitly state why a syringe cap is used with a syringe comprising a barrel, but it appears that it is used to keep the tip sterile before use.” As shown in Figure 4, spray aperture 41 is formed at distal end 40 of the spray nozzle 37. With a hole being formed in the spray nozzle 37, sterility cannot be maintained, contrary to the Examiner’s assertion. It is respectfully submitted that the Examiner’s reliance on Alchas is misplaced.

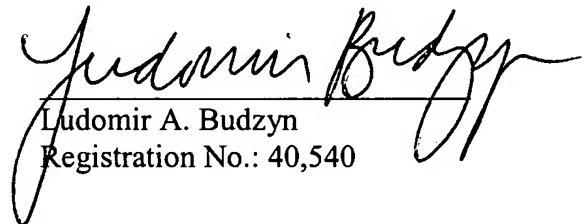
In addition, claim 15 has been amended in similar fashion to claim 1, as discussed above. As such, the hypothetical combination of Wallace et al. and Gates et al. has the same deficiencies noted above with respect to claim 1, and Alchas does not overcome these deficiencies. It is respectfully submitted that claim 15, along with depending claims 16, 22-24, 28, 31, and 32, are patentable over Wallace et al., Gates et al. and Alchas, each taken alone or in combination.

Application No.: 10/6981,385  
Docket No.: 102-539 CIP (P-6048/1)  
Reply to Office Action of April 5, 2006  
Page 11 of 11

Applicants believe that the present Amendment results in allowance of the pending claims. Applicants also believe that, upon allowance, the withdrawn claims should be re-entered and also allowed. Applicants respectfully request an opportunity to amend the withdrawn claims to correct dependencies and any minor typographical errors.

Favorable action is earnestly solicited. If there are any questions, or if additional information is required, the Examiner is respectfully requested to contact Applicants' attorney at the number listed below.

Respectfully submitted,



Ludomir A. Budzyn  
Registration No.: 40,540

HOFFMANN & BARON, LLP  
6900 Jericho Turnpike  
Syosset, New York 11791  
(973) 331-1700